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THE GOODYEAR TIRE AND RUBBER COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUIS FRANCO, individually, on behalf of himself and all other similarly situated employees,

Plaintiff,

V.

THE GOODYEAR TIRE AND RUBBER
COMPANY, an Ohio corporation and Does 1-5,

Defendant.

Case No.

**DEFENDANT'S NOTICE TO FEDERAL
COURT OF REMOVAL**

[28 U.S.C. §§ 1332, 1441, 1446]

Complaint filed: January 18, 2022
(Originally filed in Santa Clara County
Superior Court)

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**
 2 **DISTRICT OF CALIFORNIA, PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant THE GOODYEAR TIRE & RUBBER
 4 COMPANY (“Defendant” or “Goodyear”) hereby removes the above-entitled action to this Court
 5 from the Superior Court of the State of California for the County of Santa Clara, to the United States
 6 District Court, Northern District of California, pursuant to 28 U.S.C. sections 1332(d) (Class Action
 7 Fairness Act of 2005), 1441(b), and 1446 on the following grounds¹:

8 **I. JURISDICTION AND VENUE ARE PROPER**

9 1. This Court has original jurisdiction over this action pursuant to the Class Action
 10 Fairness Act of 2005 (“CAFA”), which vests the United States District Courts with original
 11 jurisdiction of any civil action: (a) that is a class action with a putative class of more than a hundred
 12 members; (b) in which any member of a class of plaintiffs is a citizen of a state different from any
 13 defendant; and (c) in which the matter in controversy exceeds the sum or value of \$5,000,000,
 14 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in
 15 accordance with United States Code, title 28, section 1446. As set forth below,
 16 this case meets all of CAFA’s requirements for removal and is timely and properly removed by the
 17 filing of this Notice.

18 2. This action was filed in the Superior Court for the State of California, County of Santa
 19 Clara. Venue properly lies in the United States District Court for the Northern District of California,
 20 pursuant to 28 U.S.C. sections 84(a), 1391, 1441, and 1446.

21 **II. STATUS OF THE PLEADINGS**

22 3. On January 18, 2022, Plaintiff Luis Franco (“Plaintiff”) commenced this action by
 23 filing a complaint in the Superior Court of California, County of Santa Clara entitled *Luis Franco,*
 24 *individually, on behalf of himself and all other similarly situated employees v. The Goodyear Tire &*
 25 *Rubber Company, an Ohio corporation, and Does 1 to 50*, designated as Case No. 22CV393403

26
 27 ¹ “To remove a case from a state court to a federal court, a defendant must file in the federal forum a
 28 notice of removal ‘containing a short and plain statement of the grounds for removal.’” *Dart Cherokee*
Basin Operating Co., LLC v. Owens, 135 S. Ct. 547 (2014), quoting 28 U.S.C. §1446(a). “A statement
 ‘short and plain’ need not contain evidentiary submissions.” *See id.* at 547.

1 (“Complaint”). The Complaint alleges six causes of action: (1) Failure to Pay Proper Premiums for
 2 Non-Compliant Meal and Rest Periods in Violation of California Labor Code §§ 512 and 226.7 and
 3 IWC Wage Order; (2) Failure to Provide Rest Periods in Violation of California Labor Code § 226.7
 4 and IWC Wage Order; (3) Failure to Provide Accurate Itemized Wage Statements in Violation of
 5 California Labor Code § 226 and IWC Wage Order; (4) Failure to Pay Earned Wages Upon Separation
 6 in Violation of California Labor Code §§ 201-203; (5) Unlawful, Unfair and Fraudulent Business
 7 Practices (Cal. Bus. & Prof. Code §§ 17200 et. seq.); and (6) Civil Penalties Pursuant to Labor Code
 8 Private Attorneys General Act of 2004 (Cal. Lab. Code §§2698 *et seq* or “PAGA”). (*See* Declaration
 9 of Sarah E. Ross in Support of Defendant’s Notice to Federal Court of Removal (“Ross Decl.”) ¶ 2,
 10 Exhibit (“Exh.”) A.).

11 4. On January 19, 2022, Plaintiff filed a Proof of Service of Order Deeming Case
 12 Complex and Staying Discovery and Responsive Pleading Deadline. (Ross Decl., ¶ 3, Exh. B.)

13 5. On January 31, 2022, Plaintiff served Defendant with the Complaint, along with copies
 14 of the Summons, Complaint, Civil Case Cover Sheet, Alternative Dispute Resolution (ADR)
 15 Information Package, and Order Deeming Case Complex and Staying Discovery and Responsive
 16 Pleading Deadline, through Defendant’s agent for service of process. (Ross Decl., ¶ 4, Exh. C.)

17 6. On February 2, 2022, Plaintiff filed a Proof of Service of Summons and Complaint.
 18 (Ross Decl., ¶ 5, Exh. D.)

19 7. On March 1, 2022, Goodyear filed its state court answer to Plaintiff’s Complaint. (Ross
 20 Decl., ¶ 6, Exh. E.)

21 8. To Defendant’s knowledge, the documents attached to the Declaration of Sarah E. Ross
 22 constitute all process, pleadings, and orders served upon Defendant or filed in the State Court action
 23 by Defendant. (Ross Decl., ¶ 7.)

24 **III. TIMELINESS OF REMOVAL AND NOTICE**

25 9. An action may be removed from state court by filing a notice of removal, together with
 26 a copy of all process, pleadings, and orders served on the Defendant within 30 days of service on
 27 defendant of the initial pleading. *See* 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Mitchetti Pipe*
 28

1 *Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the 30-day removal period runs from the service of the
 2 summons and complaint).

3 10. Plaintiff served Defendant on January 31, 2022. Thirty days from January 31, 2022 is
 4 March 2, 2022. This Notice of Removal is timely filed. 28 U.S.C. § 1446(b).²

5 **IV. CAFA JURISDICTION**

6 11. CAFA grants United States district courts original jurisdiction over: (a) civil class
 7 action lawsuits filed under federal or state law; (b) where the alleged class is comprised of at least 100
 8 individuals; (c) in which any member of a class of plaintiffs is a citizen of a state different from any
 9 defendant; and (d) where the matter's amount in controversy exceeds \$5,000,000, exclusive of interest
 10 and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance with 28
 11 U.S.C. § 1446. As set forth below, this case meets each CAFA requirement for removal, and is timely
 12 and properly removed by the filing of this Notice of Removal.

13 **A. Plaintiff Filed a Class Action Under State Law**

14 12. Plaintiff filed his action as a class action based on alleged violations of California state
 15 law. (Complaint, ¶¶ 1-2.)

16 **B. The Proposed Class Contains At Least 100 Members**

17 13. Title 28 U.S.C. § 1332(d)(5)(B) states that the provisions of CAFA do not apply to any
 18 class action where “the number of members of all proposed plaintiff classes in the aggregate is less
 19 than 100.”

20 14. Plaintiff filed this action on behalf of a class (and five sub-classes) of current and
 21 former hourly non-exempt employees of Defendant who were employed by Defendant from January
 22 18, 2018 through the present. (Complaint, ¶¶ 29-30.)

23 15. Based on a review of Defendant’s records, Defendant employed at least 1,796 non-
 24 exempt employees since January 18, 2018. (Declaration of Susan K. Buckley (“Buckley Decl.”), ¶ 5.)
 25 Accordingly, Defendant’s internal records demonstrate that there are well over 100 putative class
 26 members in this matter.

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² Regardless, arguably, the 30-day deadline under 28 U.S.C. §1146(b)(1) does not apply to removals
 under CAFA. *See Roth v. CHA Hollywood Med. Ctr.*, 720 F.3d 1121, 123, 125-126 (9th Cir. 2013).

1 **C. Defendant Is Not a Governmental Entity**

2 16. Under 28 U.S.C. § 1332(d)(5)(A), CAFA does not apply to class actions where
 3 “primary defendants are States, State officials, or other governmental entities against whom the district
 4 court may be foreclosed from ordering relief.”

5 17. Defendant is a corporation, not a state, state official, or other government entity exempt
 6 from CAFA. (Buckley Decl., ¶ 2.)

7 **D. There Is Diversity Between At Least One Class Member and Defendant**

8 18. “Under CAFA, complete diversity is not required; ‘minimal diversity’ suffices.”
 9 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007).

10 19. CAFA’s minimal diversity requirement is satisfied, *inter alia*, when “any member of a
 11 class of plaintiffs is a citizen of a State different from any defendant.”
 12 28 U.S.C. §§ 1332(d)(2)(A), 1453(b). In a class action, only the citizenship of the named parties is
 13 considered for diversity purposes, and not the citizenship of the class members. *Snyder v. Harris*, 394
 14 U.S. 332, 340 (1969). Additionally, for removal purposes, diversity must exist both at the time the
 15 action was commenced in state court and at the time of removal. *See Strotek Corp. v. Air Trans. Ass’n
 16 of Am.*, 300 F.3d 1129, 1130-1131 (9th Cir. 2002). Minimal diversity of citizenship exists here because
 17 Plaintiff and Defendant are citizens of different states.

18 20. For diversity purposes, a person is a “citizen” of the state in which she is domiciled.
 19 *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983); *see also Kanter v.*
 20 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (confirming that person’s domicile is the
 21 place he resides with the intention to remain). Furthermore, allegations of residency in a state court
 22 complaint create a rebuttable presumption of domicile supporting diversity of citizenship. *Lew v.*
 23 *Moss*, 797 F.2d 747, 751 (9th Cir. 1986); *see also State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d
 24 514, 519 (10th Cir. 1994) (allegation by party in state court complaint of residency “created a
 25 presumption of continuing residence in [state] and put the burden of coming forward with contrary
 26 evidence on the party seeking to prove otherwise”); *Smith v. Simmons*, No. 1:05-CV-01187-OWW-
 27 GSA, 2008 WL 744709, at *7 (E.D. Cal. Mar. 18, 2008) (finding a place of residence provides “‘prima
 28 facie’ case of domicile”).

1 21. At all relevant times, Plaintiff has been a resident of Santa Clara County, California.
 2 (Complaint, ¶ 10.) Defendant has established by a preponderance of the evidence that Plaintiff is
 3 domiciled in California, and is, thus, a citizen of California. *See id.*; *Lew*, 797 F.2d at 751; *Smith*, 2008
 4 WL 744709, at *7.

5 22. For purposes of 28 U.S.C. § 1332, “a corporation shall be deemed to be a citizen of
 6 every State [] by which it has been incorporated and of the State [] where it has its principal place of
 7 business.” 28 U.S.C. § 1332(c)(1).

8 23. Defendant is a publicly traded corporation, and is incorporated under the laws of the
 9 State of Ohio, and is therefore, a citizen of Ohio. (Buckley Decl., ¶ 2.)

10 24. Defendant’s principal place of business is in Ohio. (*Id.* at ¶ 3.) To determine a
 11 corporation’s principal place of business, the courts apply the “nerve center test,” which deems the
 12 principal place of business to be the state where a corporation’s officers “direct, control, and coordinate
 13 the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010). In practice, the
 14 principal place of business is “where the corporation maintains its headquarters.” *Id.* at 92–93.
 15 Defendant maintains its principal place of business in Ohio, where its executive and administrative
 16 offices are located, and where the majority of its executive and administrative functions are performed.
 17 (Buckley Decl., ¶ 3.) Defendant’s principal place of business is where its officers direct, control and
 18 coordinate its activities. *See Hertz*, 559 U.S. at 92–93.

19 25. The presence of Doe defendants in this case has no bearing on diversity with respect to
 20 removal. *See* 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is removable on the basis
 21 of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious
 22 names shall be disregarded.”).

23 26. Accordingly, the named Plaintiff is a citizen of a state (California) different from
 24 Defendant (Ohio), and diversity exists for purposes of CAFA jurisdiction. *See* 28 U.S.C. §§
 25 1332(d)(2)(A), 1453.

1 **E. The Amount In Controversy Exceeds \$5,000,000³**

2 27. This Court has jurisdiction under the CAFA, which authorizes the removal of class
 3 actions in which, among the other factors mentioned above, the amount in controversy for all class
 4 members exceeds \$5,000,000. 28 U.S.C. § 1332(d). “The claims of the individual class members shall
 5 be aggregated to determine whether the matter in controversy exceeds” this amount. 28 U.S.C.
 6 § 1332(d)(6).

7 28. The removal statute requires that a defendant seeking to remove a case to federal court
 8 must file a notice “containing a short and plain statement of the grounds for removal.” 28 U.S.C. §
 9 1446(a). The Supreme Court, in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547,
10 554 (2014), recognized that “as specified in §1446(a), a defendant’s notice of removal need include
11 only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” The
12 defendant’s “amount-in-controversy allegation should be accepted” just as a plaintiff’s amount-in-
13 controversy allegation is accepted when a plaintiff invokes federal court jurisdiction. *Id.* at 553.

14 29. Defendant denies the validity and merit of the entirety of Plaintiff’s alleged claims, the
 15 legal theories upon which they are ostensibly based, and the alleged claims for monetary and other
 16 relief that flow therefrom. For purposes of removal only, however, and without conceding that Plaintiff
 17 or the putative class are entitled to any damages or penalties whatsoever, it is readily apparent that the
 18 aggregated claims of the putative class establishes, by a preponderance of evidence, that the amount
 19 in controversy well exceeds the jurisdiction minimum of \$5,000,000. *See Lewis v. Verizon Communs.,*
 20 *Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (the “amount in controversy is simply an estimate of the total
 21 amount in dispute, not a prospective assessment of [D]efendant’s liability”); *see also Roth v. CHA*
 22 *Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1123 (9th Cir. Cal. 2013) (a defendant “may remove when
 23 it discovers, based on its own investigation, that a case is removable.”).

24 30. For purposes of determining whether a defendant has satisfied the amount in
 25 controversy requirement, the Court must presume that the plaintiff will prevail on their claims.
 26 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp.2d 993, 1001 (C.D. Cal. 2002)

27 ³ The alleged damages calculations contained herein are for purposes of removal only. Defendant
 28 denies that Plaintiff or the putative class are entitled to any relief whatsoever and expressly reserves
 the right to challenge Plaintiff’s alleged damages in this case.

1 (citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994) (stating that the amount in
 2 controversy analysis presumes that “plaintiff prevails on liability.”). The ultimate inquiry is what
 3 amount is put “in controversy” by a plaintiff’s complaint, not what a defendant might actually owe.
 4 *Rippee v. Boston Mkt. Corp.*, 408 F.Supp.2d 982, 986 (S.D. Cal. 2005); *accord Ibarra v. Manheim*
 5 *Inv., Inc.* 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (explaining that even when the court is persuaded
 6 the amount in controversy exceeds \$5,000,000, defendants are still free to challenge the actual amount
 7 of damages at trial because they are only estimating the amount in controversy).

8 31. Here, Plaintiff does not allege the amount in controversy in the Complaint, though he
 9 alleges “uniform unlawful practices” and “common policy and practice” by Defendant that
 10 purportedly deprived class members of wages. (Complaint, ¶¶ 2, 20, 45.) He further alleges Defendant
 11 allegedly, engaged in unlawful practices and policies against its employees. (Complaint, ¶¶ 83-84.)

12 32. As discussed above, Plaintiff filed his Complaint on January 18, 2022, and he alleges
 13 claims for failure to pay proper premiums for non-compliant meal and rest periods, failure to provide
 14 rest periods, failure to provide accurate itemized wage statements, failure to pay earned wages upon
 15 separation, claims under the California Unfair Competition Law (“UCL”), and civil penalties pursuant
 16 to the Private Attorneys General Act (“PAGA”). (Complaint, ¶¶ 42-99.)

17 **1. Amount in Controversy – Plaintiff’s Claim for Failure to Provide Rest
 18 Breaks (Labor Code § 226.7)**

19 33. In his Second Cause of Action, Plaintiff alleges that Defendant failed to provide to
 20 Plaintiff and the class “with adequate and compliant rest periods as required by California law and
 21 failed to compensate Plaintiff and other similarly situated employees one additional hour of pay....”
 22 (Complaint, ¶ 56.) Plaintiff’s cause of action for violation of the UCL extends the statute of limitations
 23 on Plaintiff’s meal period and rest break causes of action to four years. (Complaint, ¶¶ 76-88; *see* Cal.
 24 Bus. & Prof. Code § 17208.)

25 34. Based on a review of its records, Defendant employed at least 1,796 non-exempt
 26 employees since January 18, 2018; the average hourly rate of pay for non-exempt employees during
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this time period was approximately \$17.84⁴; and each employee worked an average of 69 weeks. (Buckley Decl., ¶ 5.)

35. Defendant denies the validity and merit of Plaintiff's rest break claim. For purposes of removal, only, based on Plaintiff's legal theory, and assuming two rest period violations per week, the amount in controversy for Plaintiff's rest break claim is approximately **\$4,421,608.32** (\$17.84 hourly rate * 2 missed rest breaks * 69 workweeks * 1,796 employees). *See Mortley v. Express Pipe & Supply Co.*, Case No. SACV 17-1938-JLS-JDE, 2018 WL 708115, at *4 (C.D. Cal. Feb. 5, 2018) (assumption of two missed rest periods per week reasonable based on allegations of a policy and practice of understaffing and "routine and systematic" violations); *Giannini v. Northwestern Mut. Life Ins. Co.*, Case No. C 12-77 CW, 2012 WL 1535196, at *3 (N.D. Cal. Apr. 30, 2012) (finding one hundred percent violation rate for rest period claim reasonable based on allegation that the putative class members "routinely" did not receive rest periods).

2. Amount in Controversy – Plaintiff’s Claim for Inaccurate Wage Statements (Labor Code § 226)

36. In his Third Cause of Action, Plaintiff alleges that Defendant, “consistently failed to provide Plaintiff and Class Members with adequate pay statements as required by California Labor Code section 226,” and thus failed to keep accurate payroll records. (Complaint, ¶¶ 64-65.)

37. Labor Code section 226(e) provides for a statutory penalty for violations of Labor Code section 226(a)'s wage statement requirements of \$50 or actual damages per employee for the initial pay period in which a violation occurs, and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of \$4,000 per employee. CAL. LABOR CODE § 226(a). The statutory period for Labor Code section 226(e) penalties is one year. CAL. CODE CIV. PROC. § 340.

38. Defendant denies the validity and merit of Plaintiff's wage statement claim. For purposes of removal only, based on a review of its records, Defendant has employed at least 835 non-exempt employees since January 18, 2021, for at least 22,290 pay periods. (Buckley Decl., ¶¶ 6-7.) Therefore, the average number of pay periods per employee is more than 26 pay periods (22,290 pay

⁴ For purposes of this removal calculation, Defendant is using the average *hourly* rate. Utilizing the average *regular rate* would only increase this calculation.

1 periods/835 employees), and the resulting average penalties per employee are \$2,550 ([\\$50 * 1] +
 2 [\$100 * 25]). Multiplying that number by the 835 employees at issue equals **\$2,129,250.00**.

3 **3. Amount in Controversy – Plaintiff’s Waiting Time Penalties Claim (Labor**
 4 **Code § 203)**

5 39. In his Fourth Cause of Action, Plaintiff seeks waiting time penalties pursuant to
 6 California Labor Code sections 201-203. (Complaint, ¶¶ 68-75.) The statute of limitations for
 7 Plaintiff’s Labor Code section 203 waiting time penalty claim is three years. *Pineda v. Bank of Am.*,
 8 *N.A.*, 50 Cal. 4th 1389, 1395 (2010) (“no one disputes that when an employee sues to recover both
 9 unpaid final wages and the resulting section 203 penalties, the suit is governed by the same three-year
 10 limitations period that would apply had the employee sued to recover only the unpaid wages”).

11 40. The Labor Code’s penalty for failure to pay wages at termination is up to 30 days’
 12 wages for each employee. CAL. LABOR CODE § 203(a).

13 41. For purposes of removal only, based on a review of its records, at least 770 employees
 14 have separated from Defendant’s employment since January 18, 2019. (Buckley Decl., ¶ 8.) The
 15 average pay rate for employees who separated from Defendant since January 18, 2019 is \$16.77. (*Id.*)
 16 Therefore, the amount in controversy for Plaintiff’s waiting time penalties claim in his Fourth Cause
 17 of Action is approximately **\$3,099,096.00** (770 employees * 8 hours * 30 days * \$16.77 average rate
 18 of pay).

19 **4. Amount in Controversy – Plaintiff’s Claim for Attorneys’ Fees**

20 42. Finally, Plaintiff seeks attorneys’ fees and costs in his Complaint. (Complaint, Prayer
 21 for Relief ¶ c.) Thus, the Court must consider attorneys’ fees in determining whether the amount in
 22 controversy is met as it is well-settled that claims for statutory attorneys’ fees are to be included in the
 23 amount in controversy. *See, e.g., Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), *cert. denied*, 127 S.Ct. 157 (2006); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“We
 25 hold that where an underlying statute authorizes an award of attorneys’ fees, either with mandatory or
 26 discretionary language, such fees may be included in the amount in controversy.”).

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1 43. In California, it is not uncommon for an attorneys' fee award to be 25 to 33 percent of
 2 a settlement or judgment. *See, e.g., McGuigan v. City of San Diego*,
 3 183 Cal. App. 4th 610, 638 (2010) (noting attorneys' fees paid in settlement of \$1.6 million); *Vasquez*
 4 *v. California*, 45 Cal. 4th 243, 249 (2008) (noting award of \$435,000 in attorneys' fees for class claims
 5 involving failure to pay wages, liquidated damages, penalties, and waiting time penalties); *Amaral v.*
 6 *Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1216-1218 (2008) (affirming award of \$727,000 in
 7 attorneys' fees plus a multiplier that equated to total fees of \$1,199,550 in class case involving
 8 violations of a living wage ordinance, the California Labor Code, as well as unfair competition and
 9 contract claims); *see also Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex.
 10 2000) ("Empirical studies show that, regardless whether the percentage method or the lodestar method
 11 is used, fee awards in class actions average around one-third of the recovery.").

12 44. The attorneys' fees benchmark in the Ninth Circuit is 25 percent.
 13 *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989)
 14 ("We note with approval that one court has concluded that the 'bench mark' percentage for the fee
 15 award should be 25 percent."); *Lo v. Oxnard Euro. Motors, LLC*, 2012 WL 1932283, at *3 (S.D. Cal.
 16 May 29, 2012) ("The Ninth Circuit has accepted as a benchmark for an attorneys' fees awards a
 17 twenty-five percent of the common fund recovery.").

18 45. Based on the above, the amount in controversy for failure to provide rest breaks, failure
 19 to pay wages at termination, and wage statement penalties, which does not consider Plaintiff's claims
 20 for Defendant's purported failure to pay the proper rate for meal and rest break premiums and violation
 21 of the UCL, is conservatively **\$9,649,954.32**. This subtotal exceeds \$5,000,000 absent any inclusion
 22 of attorneys' fees. However, considering attorneys' fees at the benchmark percentage of 25 percent
 23 further increases the amount in controversy by \$2,412,488.58, a total amount in controversy of
 24 **\$12,062,422.90**.

25 **F. Amount in Controversy – Summary**

26 46. As explained above, removal of this action is proper, as the aggregate value of
 27 Plaintiff's causes of action for failure to pay rest period premiums, failure to pay wages at time of
 28 termination, wage statement penalties, and attorneys' fees are well in excess of the CAFA

1 jurisdictional requirement of \$5 million. *See* 28 U.S.C. § 1332(d)(2). Notably, as discussed above, this
 2 estimate does not account for Plaintiff's claim in his First Cause of Action for failure to pay proper
 3 meal and rest break premiums, nor does it include any other damages, penalties, or restitution that
 4 Defendant may be ordered to pay pursuant to Plaintiff's UCL claim (Fifth Cause of Action). Figuring
 5 those claims into the equation further reinforces that the amount in controversy exceeds five million
 6 dollars.

7 47. Accordingly, although Defendant denies Plaintiff's claims as alleged in the Complaint,
 8 the jurisdictional minimum is satisfied for purposes of determining the amount in controversy, as it
 9 exceeds the \$5,000,000 threshold required under CAFA.

Plaintiffs' Alleged Claim	Amount in Controversy Conservative Estimate
Failure to Provide Rest Periods	\$4,421,608.32
Waiting Time Penalties in Fourth Cause of Action	\$3,099,096.00
Inaccurate Wage Statements	\$2,129,250.00
Attorneys' Fees	\$2,412,488.58
Amount in Controversy	\$12,062,442.90

17 V. **NOTICE TO THE COURT AND PARTIES**

18 48. Contemporaneously with the filing of this notice of removal in the United States
 19 District Court for the Northern District of California, written notice of such filing will be given by the
 20 undersigned to Plaintiff's counsel of record and a copy of the notice of removal will be filed with the
 21 clerk of the court for the Superior Court of the County of Santa Clara. (Ross Decl., ¶ 8.)

22 WHERFORE, Defendant hereby removes this action from the Superior Court of the
 23 State of California, County of Santa Clara, to the United States District Court for the Northern District
 24 of California.

1 Dated: March 2, 2022



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